



40 CFR Part 52

[EPA-R02-OAR-2020-0466, FRL 10025-61-Region 2]

Approval of Air Quality Implementation Plans; New York;
Part 212, Process Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan concerning process operations. The intended effect of this revision is to streamline and update provisions, align those provisions with permitting regulations, and provide regulatory certainty for the regulated community. New York's comprehensive submittal also included Operating Permit Program requirements; however, the EPA will be acting on these revisions under a separate action.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-R02-OAR-2020-0466, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. EPA's Evaluation of New York's Submittal
- III. Proposed Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background

The Environmental Protection Agency (EPA) proposes to approve New York's State Implementation Plan (SIP) submittal consisting of revisions to Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) Part 212, now entitled, "Process Operations," which applies to process emission sources

and/or emission points associated with a process operation, and which will streamline and update provisions, align those provisions with permitting regulations, and provide regulatory certainty for the regulated community. In addition, attendant revisions were made to 6 NYCRR Part 200, “General Provisions,” in order to add a new Subdivision (cy) to define “Polychlorinated Dibenzo-para-dioxins and Polychlorinated Dibenzofurans” to Section 200.1. The EPA is proposing to approve these revisions, requested by New York, to strengthen the effectiveness of New York’s SIP.

II. EPA’s Evaluation of New York’s Submittal

On February 5, 2019, the New York State Department of Environmental Conservation (NYSDEC) submitted to the EPA the proposed revisions to Parts 200 and 212, along with supplemental materials, including documentation of the comment period and public hearings, and the NYSDEC’s responses to public comments. On March 26, 2021, the NYSDEC submitted to the EPA additional proposed attendant revisions to Part 212, along with documentation of the comment period and public hearings, and the NYSDEC’s responses to public comments. These materials are in the EPA’s docket for this proposal. The State’s March 26, 2021 comprehensive SIP submittal also proposes revisions to the Part 201 Operating Permit Program to require owners and operators of air contamination sources to obtain a permit or registration, and for Part 200.1 General Provisions for combustion installation, emergency power generating station internal combustion engine, fossil fuel and furnace. However, the EPA will act on these revisions in a separate action.

Revisions to Parts 200 and 212

The EPA is proposing to approve the revisions to Parts 200 and 212. The revisions to Part 200 apply to a combination or mixture containing four to eight chlorinated dibenzo-para-dioxins and/or chlorinated dibenzofurans and/or specific polychlorinated biphenyls. The revisions to Part 212 apply to process emission sources and/or emission points associated with a process operation. These revisions streamline and update provisions, align those provisions with permitting regulations, and provide regulatory

certainly for the regulated community. The EPA proposes to approve these revisions to strengthen the New York's SIP.¹

The proposed changes to Part 212 include: establishing consistent terminology between Part 212 Part 200, as well as 6 NYCRR Part 201, "Permits and Registrations"; establishing a Toxic Best Available Control Technology (T-BACT) standard for toxic air contaminants; clarifying the interaction between Part 212 and the National Emission Standards for Hazardous Air Pollutants (NESHAPs); offering a streamlined approach for demonstrating compliance with regulatory standards for air contaminants by adopting a mass emission rate option; replacing the current Part 212 control requirement, which provides the NYSDEC Commissioner with discretion to establish the degree of required air cleaning, with a performance of air dispersion modeling analysis in order to demonstrate compliance with the NYSDEC Guideline Concentrations or National Ambient Air Quality Standards (NAAQS); controlling High Toxicity Air Contaminants (HTACs) to the greatest extent possible; and generally reorganizing and clarifying Part 212. Aside from renumbering and replacement of the term "Lower Orange County" with a list of regulated Orange County towns, this proposed rulemaking does not change the language of existing Section 212.10, "Reasonably Available Control Technology for Major Facilities," which is renumbered in the proposed revisions as Subpart 212-3. Neither does this proposed rulemaking change the language of existing Section 212.12, "Control of Nitrogen Oxides for Hot Mix Asphalt Production Plants," other than renumbering the section to Section 212-2.4 in line with the proposed new numbering. Under Sections 212-3.1(c)(3) and 212-4.1(c), process specific Reasonably Available Control Technology (RACT) determinations must be submitted to the EPA as SIP revisions and are effective only if approved by the EPA.

¹ The NYSDEC repealed Part 212, which was previously entitled, "General Process Emission Sources," and replaced it with the current version, entitled, "Process Operations." The NYSDEC proposes to revise the New York SIP to remove an outdated version of Part 212 that was previously approved by the EPA on July 12, 2013 (78 FR 41846), and incorporate the current March 26, 2021 version of Part 212.

In addition, Subdivision 212-1.4(a) is revised to clarify its requirements. Subdivision 212-1.4(k) is revised to address toxic emissions from the iron and steel industry. Paragraph 212-1.5(e)(2) is revised to include an alternative toxic impact assessment method. Table 2 in Section 212-2.2 is revised to be consistent with Table 1 in Subpart 201-9 and to reflect the latest toxicological information. Table 6 in Subdivision 212-2.5(b) is revised to show permissible emission rates consistent with the formula presented in that Subdivision.

III. Proposed Action

The EPA proposes to approve the revisions to New York's Title 6 of the New York Codes, Rules and Regulations Part 212, "General Process Emission Sources" and Section 200.1, "Definitions," both with a State effective date of April 30, 2015, along with additional revisions to Part 212, with a State effective date of February 25, 2021, into New York's SIP, in order to strengthen enforcement of the State's air pollution control regulations. The EPA is soliciting public comments on the issues discussed in this proposed rulemaking action. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference the provisions described above in Section II.

The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or in hard copy at the EPA Region 2 Office (**please contact the person identified in the FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law that meets federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175, because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct compliance costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 26, 2021.

Walter Mugdan,
Acting Regional Administrator,
EPA Region 2.

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